

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.  
SECURITIES, DERIVATIVE & ERISA  
LITIGATION

No. 2:08-md-1919 MJP

IN RE WASHINGTON MUTUAL, INC.  
SECURITIES LITIGATION

Lead Case No. C08-0387 MJP

**AMENDED STIPULATED ORDER  
ESTABLISHING DEPOSITION  
PROTOCOL**

This Document Relates to:  
ALL ACTIONS

**(DLC-12/PLC-13)**

IN RE WASHINGTON MUTUAL, INC.  
CALIFORNIA SECURITIES LITIGATION

Lead Case No. C09-664 MJP

This Document Relates to: ALL CASES

## **DEPOSITION PROTOCOL ORDER**

This Deposition Protocol shall govern all depositions of fact witnesses in all proceedings that have been consolidated or coordinated with MDL 1919. Expert witness depositions are not subject to this Deposition Protocol.

### **I. PARTIES SUBJECT TO THE DEPOSITION PROTOCOL**

As set forth in detail below, all named plaintiffs and named defendants in the complaints that comprise this MDL are subject to this Deposition Protocol. By agreeing to this Deposition Protocol, there is no agreement or concession that a party is entitled to the discovery requested, that any particular deposition is appropriate and relevant to the subject matter of this case, nor is there any waiver of any jurisdictional or any other defense, including all defenses enumerated under Rule 12.

#### **A. Plaintiffs**

##### **1. Class Action Plaintiffs**

The “Class Action Plaintiffs” are the Lead Plaintiff and additional Plaintiffs named in the Amended Consolidated Class Action Complaint, dated June 15, 2009, in the consolidated Class Action (i.e., Master File No. 08-md-1919-MJP).

##### **2. Coordinated Plaintiffs**

The “Coordinated Plaintiffs” are the plaintiffs named at ¶ 24 of the Second Amended Complaint, dated July 23, 2010 (“Flaherty SAC”), filed in *Flaherty & Crumrine Preferred Income Fund Inc. v. Killinger*, Case No. C09-1756-MJP [Dkt. 102 in C09-1756 MJP; Dkt. 693 in 08-1919-MJP]; and the plaintiffs named at ¶¶ 19-20 of the Second Amended Consolidated Complaint, dated May 21, 2010 (“California SACC”) filed in *Solton v. Killinger*, Case No. C09-664-MJP [Dkt. 70 in 09-cv-664-MJP; Dkt. 609 in 08-1919-MJP].

Lead Counsel shall keep Counsel for the Coordinated Plaintiffs informed about depositions of common interest in the Class Action and the Coordinated Actions. To assure cooperation and orderly case management, the communication of information among and

between Lead Counsel and Counsel for the Coordinated Plaintiffs shall not be deemed a waiver of the attorney-client privilege or the work product doctrine.

Counsel for the Class Action Plaintiffs and the Coordinated Plaintiffs agree to use their best efforts to coordinate deposition discovery of fact witnesses. To the extent practicable, communications from the Coordinated Plaintiffs to defense counsel regarding depositions shall be through Lead Counsel. Counsel for the Coordinated Plaintiffs will communicate all appropriate requests for depositions by any of the Coordinated Plaintiffs to Lead Counsel.

Unless agreed by the parties or otherwise ordered by the Court, an individual will only be deposed one time and that deposition may be used in the Class Action and any of the Coordinated Actions. The depositions taken by plaintiffs will be conducted by Lead Counsel. In advance of each deposition, counsel for the Coordinated Plaintiffs shall confer with Lead Counsel as to the areas of expected examination. Should any counsel for the Coordinated Plaintiffs seek to ask non-duplicative questions of a deponent, Lead Counsel shall devise a process through consultation with counsel in the Coordinated Actions to permit an attorney for the Coordinated Plaintiffs to participate in the taking of the deposition according to guidelines to which Lead Counsel and counsel for the Coordinated Plaintiffs agree. Counsel for the Coordinated Plaintiffs who conducts any such examination shall use best efforts to complete the examination within the time allotted to the Lead Plaintiff.

#### **B. Defendants**

Those named at ¶¶ 16-39 and 680-714 of the Securities Amended Complaint, ¶¶ 26-51 of the Flaherty SAC, and ¶¶ 22-35 of the California SACC:

1. Melissa J. Ballenger.
2. Banc of America Securities LLC.
3. Barclays Capital Inc.
4. BNY Capital Markets, Inc.
5. Cabrera Capital Markets, LLC.
6. Thomas W. Casey.

7. Ronald J. Cathcart.
8. Citigroup Global Markets, Inc.,
9. Credit Suisse Securities (USA) LLC.
10. Deloitte & Touche LLP.
11. Deutsche Bank Securities Inc.
12. Goldman, Sachs & Co.
13. Greenwich Capital Markets, Inc.
14. Anne V. Farrell.
15. Stephen E. Frank.
16. J.P. Morgan Securities Inc.
17. Keefe, Bruyette & Woods, Inc.
18. Kerry K. Killinger.
19. Thomas C. Leppert.
20. Charles M. Lillis.
21. Philip D. Matthews.
22. Regina T. Montoya.
23. Morgan Stanley & Co. Incorporated.
24. Michael K. Murphy.
25. Margaret Osmer-McQuade.
26. Mary E. Pugh.
27. William G. Reed.
28. Stephen J. Rotella.
29. Samuel A. Ramirez & Company, Inc.
30. David C. Schneider.
31. Orin C. Smith.
32. James H. Stever.
33. UBS Securities LLC.

34. The Williams Capital Group, L.P.

35. Willis B. Wood, Jr.

36. John F. Woods.

## II. SCHEDULING OF DEPOSITIONS

### A. Time Period for Depositions

Depositions will begin on October 4, 2010. No deposition shall take place after July 5, 2011 absent advance permission from the Court.

### B. Scheduling Committee

Lead Plaintiff and Defendants shall create a Scheduling Committee (the "Scheduling Committee") of no more than two representatives, one member for Lead Plaintiff and one member for Defendants, to oversee the selection and scheduling of all fact witness depositions, and shall notify all parties of the members of the Scheduling Committee within 7 calendar days of the date of this Order. The Scheduling Committee shall consult before depositions are noticed and shall make reasonable efforts to schedule depositions (including third-party depositions) on dates and locations convenient for the witnesses and counsel.

As a general matter, Lead Plaintiff's counsel in the Securities Action shall be responsible for coordinating depositions among the Coordinated Plaintiffs, and the Coordinated Plaintiffs shall not notice or schedule any depositions without first conferring with Lead Plaintiff's counsel in the Securities Action. Likewise, as a general matter, Defendants' liaison counsel shall be responsible for coordinating depositions among Defendants in the Coordinated Actions, and Defendants in the Coordinated Actions shall not notice or schedule any depositions without first conferring with Defendants' liaison counsel.

### C. Deposition Phases

As defined below, the parties will conduct the depositions in three phases (each a "Phase").

On or before September 10, 2010, the parties shall exchange lists of anticipated witnesses and proposed deposition dates for the purpose of scheduling depositions between October 4, 2010 and December 23, 2010 ("Phase I").

On November 19, 2010, the parties shall exchange lists of anticipated witnesses and proposed deposition dates for the purpose of scheduling depositions between January 4, 2011 and March 25, 2011 ("Phase II").

On March 1, 2011, the parties shall exchange lists of anticipated witnesses and proposed deposition dates for the purpose of scheduling depositions between March 28, 2011 and July 5, 2011 ("Phase III").

Phase	Time Period	List of Deponents Due
I	October 4, 2010 to December 23, 2010	September 10, 2010
II	January 4, 2011 to March 25, 2011	November 19, 2010
III	March 28, 2011 to July 5, 2011	March 1, 2011

#### **D. Deposition Scheduling**

1. The purpose of this scheduling protocol is to facilitate, coordinate and streamline the scheduling and conduct of depositions. For each Phase, one Defendant representative and one Lead Plaintiff representative shall prepare a good faith list, in accordance with the deadlines set forth above, of the witnesses that they reasonably believe their side will want to depose during the Phase. The representative for Lead Plaintiff will share the list with counsel for the Coordinated Plaintiffs prior to exchanging the list with the Defendant representative.

2. To facilitate scheduling, a party at its election may prioritize its list of witnesses as a first or second choice for deposition during the Phase. To ensure adequate notice, the parties may begin the process of scheduling and issuing subpoenas to third-party witnesses prior to a deadline for exchanging lists.

1           3.       Within ten (10) calendar days of exchanging the lists of anticipated  
2 witnesses and proposed deposition dates, any counsel representing any witness shall notify the  
3 noticing party of such representation and shall work cooperatively to select mutually agreeable  
4 dates for the deposition, subject to any calendar conflicts of the witness.

5           4.       At least 20 calendar days before the beginning of each phase, the  
6 Scheduling Committee shall notify all parties of the final list of the deponents for that phase, as  
7 of that date. To the extent necessary, the Scheduling Committee will promptly provide all  
8 parties with updates, changes or additions to the deposition schedule.

9           5.       The party requesting the deposition shall be responsible for serving  
10 deposition notices for that deposition on all parties. Counsel for parties who seek depositions of  
11 non-party witnesses shall contact the non-party in an attempt to voluntarily schedule the  
12 requested deposition within the time requested by counsel. Counsel for parties who seek  
13 depositions of non-party witnesses are responsible for serving a subpoena on the non-party  
14 pursuant to Rule 45 of the Federal Rules of Civil Procedure. Counsel shall coordinate with the  
15 Scheduling Committee in scheduling non-party depositions.

16           6.       Depositions may be scheduled Monday through Friday. Absent good  
17 cause or extraordinary circumstances, only one deposition per day may be scheduled during  
18 Phase I and II, and no more than two depositions per day may be scheduled during Phase III.

19           7.       If the counsel acting to coordinate the deposition is unable to secure the  
20 voluntary attendance of the anticipated witness (for example, former employees of the  
21 Defendants) within a reasonable period, the party that requested the deposition will be notified so  
22 that arrangements can be made for the issuance and service of a subpoena.

23           8.       After the exchange of witness lists, or during a Phase, a party may remove,  
24 substitute or notice additional depositions as long as the party provides sufficient notice of the  
25 new or additional deposition, for party witnesses the party and his or her counsel agree, and it  
26 does not result in exceeding the number of depositions per day allowed during that Phase.  
27

1           9.       In the event a witness who is identified cannot be scheduled during the  
2 originally proposed time period, the one Defendant representative and one Lead Plaintiff  
3 representative shall use their good faith efforts to schedule the deposition of the witness as soon  
4 as possible in the next phase.

5           10.       In the event the Scheduling Committee is unable to reach a resolution  
6 regarding the schedule or order of depositions, the party seeking relief may present the issue to  
7 the Court for expedited consideration pursuant to the procedures set forth in Local Rule 37.

#### 8           **E.       Daily Schedule**

9           Lead Plaintiff and Defendants shall make reasonable efforts to schedule  
10 depositions to begin at 9:00 a.m. (time zone of deposition) on Monday through Thursday and to  
11 begin at 8 a.m. (time zone of deposition) on Friday, unless otherwise agreed to by counsel.

#### 12           **F.       Location of Depositions**

13           To the extent possible and consistent with the Federal Rules of Civil Procedure,  
14 Seattle is the preferred location for depositions. If a witness does not agree to appear in Seattle,  
15 the location of the deposition will be set in accordance with the Federal Rules of Civil Procedure,  
16 and the Scheduling Committee will make a good faith effort to conduct the deposition near a  
17 commercial airport.

18           If multiple witnesses' depositions will take place in the same city, the Scheduling  
19 Committee shall use its best efforts to schedule those depositions during the same week or weeks  
20 of a particular phase, and on consecutive days, in order to reduce the amount of travel required  
21 by the parties and their counsel.

### 22           **III.       DEPOSITION LIMITATIONS**

#### 23           **A.       Duration of Depositions**

24           Absent good cause, extraordinary circumstances, or otherwise ordered by the  
25 Court, the examination of a witness is limited to a maximum of 1 day (defined as 7 hours of  
26 examination), except that Plaintiffs and Defendants may each designate up to 13 witnesses who  
27



1 may be deposed for up to 2 days (defined as 14 hours of examination), or as otherwise agreed to  
 2 by counsel (the "Extended Time Witnesses"). The party noticing a deposition will begin the  
 3 examination but will leave a reasonable amount of time for other parties to ask questions of the  
 4 witness, if desired. If a witness has a documented medical condition that affects his or her ability  
 5 to testify for 7 consecutive hours, the parties agree to work in good faith to accommodate an  
 6 alternative schedule for that witness.

#### 7 **B. Number of Depositions**

8 The presumptive limitation on the number of depositions that either side may take  
 9 does not apply in this case, and thus Plaintiffs and Defendants need not seek leave of Court under  
 10 Federal Rule of Civil Procedure 30(a)(2) to take in excess of 10 depositions, respectively.  
 11 However, to promote efficiency and avoid unlimited depositions, the parties also agree that there  
 12 will be no more than 13 depositions of current or former Deloitte employees. If the parties later  
 13 require additional depositions from Deloitte, and if the parties cannot agree on the additional  
 14 number of depositions, the party seeking relief may present the issue to the Court for expedited  
 15 consideration pursuant to the procedures in Local Rule 37. With respect to the number of  
 16 depositions of current or former employees of the underwriter defendants, Plaintiffs' counsel and  
 17 underwriter defendants' counsel are continuing to meet and confer on that question.

#### 18 **C. Holidays**

19 No depositions may be scheduled on the days of or the day before an in-person  
 20 Court hearing in any of these coordinated actions, or any national or religious holidays. For  
 21 purposes of this Deposition Protocol, such holidays are New Year's Eve, New Year's Day,  
 22 Martin Luther King, Jr.'s Birthday, Presidents' Day, Passover (2 days), Good Friday, Easter  
 23 Monday, Memorial Day, Independence Day, Labor Day, Rosh Hashanah (2 days), Yom Kippur  
 24 (2 days), Columbus Day, Veterans' Day, Thanksgiving (Wednesday, Thursday, and Friday),  
 25 Christmas Eve, and Christmas Day.  
 26  
 27

#### IV. CONDUCT OF DEPOSITIONS

##### A. Objections

Counsel shall comply with Fed. R. Civ. P. 30(d)(1). Objections will be made by counsel by stating, "Objection," and the basis for the objection concisely and in a nonargumentative and nonsuggestive manner. Any objection made at a deposition shall be deemed to have been made on behalf of all other parties. All objections, except those as to form and privilege, are reserved until trial or other use of the deposition. Counsel shall refrain from engaging in colloquy during deposition. The phrase "objection as to form" or similar language shall be sufficient to preserve all objections as to form and foundation until the deposition is sought to be used. If requested, the objecting party shall provide a sufficient explanation for the objection to allow the deposing party to rephrase the question.

In the event that a discovery dispute arises during a deposition that requires Court intervention, the parties may contact the Court in an attempt to resolve such dispute informally. If the Court is unavailable, the deposition will continue as to matters not in dispute and the party seeking relief may present the issue to the Court for expedited consideration pursuant to the procedures set forth in Local Rule 37.

##### B. Remote-Access Protocol

All counsel, both attending in person and by remote access, shall identify themselves and whom they represent for the record at the outset of each deposition. If counsel participating remotely believes that an objection not already made must be made on the record, such counsel shall identify themselves and state the objection. Counsel participating in depositions by remote access shall have the same opportunity to examine the witnesses as counsel attending in person.

#### V. EXHIBITS

All exhibits shall be marked sequentially. Counsel will make their best efforts to use the previously marked exhibit number in subsequent depositions rather than re-marking the same exhibit with different exhibit numbers. The index of exhibits annexed to each deposition

transcript shall contain, for each exhibit marked or referred to in the deposition, the document production (Bates) number, the exhibit number, and a brief description of the exhibit.

The deposition reporter shall be responsible for ensuring that the original of all deposition transcripts, including exhibits, are placed in a document depository.

## **VI. COURT REPORTERS**

The parties shall confer in good faith to select one court-reporting firm that will record, and where requested, videotape depositions taken under this Protocol. The court-reporting firm shall record all conference calls with the Court that occur during any deposition as part of that day's deposition transcript. Where counsel provides notice of their intent to attend deposition telephonically, teleconference capability will be provided for that deposition.

The court reporter will deposit the original transcript in a document depository. If for any reason the original is lost, misplaced, not returned, not signed, or unavailable, a certified copy may be used in its place for all purposes.

Any deposition may be videotaped by camera from a fixed position and distance. The video shall display both the questioning attorney and the deponent.

## **VII. CONFIDENTIALITY PROVISIONS**

Counsel shall have 30 calendar days from receipt of the deposition transcript to designate any portion thereof as confidential pursuant to the confidentiality order entered in this case. Such designations shall indicate the specific portion of the transcript by page and line number that counsel seeks to have designated as confidential. Until 30 calendar days from receipt of the deposition transcript has elapsed, a deposition transcript shall be presumed confidential and is subject to the Stipulated Protective Order [Dkt. 132 in 08-md-1919-MJP].

## **VIII. AMENDMENTS**

This Deposition Protocol Order may be modified by the agreement of counsel for the parties below or by order of the Court for good cause shown.

**IX. REPORTS TO THE COURT**

Once depositions begin in October 2010, the Scheduling Committee will report to the Court during the regularly scheduled status conferences as to the progress of the deposition process.

DATED this                      day of August, 2010.

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**ORDER**

IT IS SO ORDERED.

DATED this 19th day of August, 2010



Marsha J. Pechman  
United States District Judge